

DEPARTMENT OF STATE
ASSISTANT SECRETARY

290
S/28/53

TO : S - The Secretary

Through: S/S - (Attention, Mr. Trulock)

FROM : E - Mr. Leddy *ML*

RETURN TO E - MR. SCHAEZEL

SUBJECT: Letter from Mr. Blakeney, an American attorney in Tokyo, protesting Senate reservation to treaty of friendship, commerce and navigation with Japan.

(R)

611-944 / 8-753

DISCUSSION:

The Senate reservation is designed to preserve the right of the States to exclude aliens from the professions. It was attached equally to treaties with other countries on which the Senate acted July 21. It was the culmination of a considerable controversy provoked by charges (connected with the Bricker amendment movement) that the treaties as signed unjustifiably interfered with certain State laws.

Mr. Blakeney fears the reservation will provoke retaliation against the many American citizens now practicing professions in Japan. He suggests that remaining proceedings to bring the treaty into force be stayed, and that the treaty be returned to the Senate for reconsideration.

The recommended reply to Mr. Blakeney (tab A) briefly outlines the history and legal effect of the reservation, and explains why his suggestion is not feasible. The reply also indicates that we remain much interested in the situation of the American professional men in Japan, however, and hope they will not be subjected to arbitrary treatment.

RECOMMENDATION:

That the letter of reply be signed and sent out.

CONCURRENCES:

L/E, L/T, NA

FW 611:944/8-753

FILED
SEP 17 1953

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DC/R
1953
8/28/53

203940

DEPARTMENT OF STATE A/CDC/MR.

REVIEWED BY *[Signature]* DATE *9-30-53*

RDS ☐ or XDS ☐ EXT. DATE

TS AUTH. _____ REASON(S) _____

ENDORSE EXISTING MARKINGS ☐

DECLASSIFIED ☐ RELEASABLE ☒

RELEASE DENIED ☐

EXEMPTIONS _____

September 9 1953

DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT

September 3, 1953

E - Mr. Schaetzel

Rod O'Connor wishes the attached
reply to Blakeney revised as appropriate
for signature by Mr. Maugh.

He suggested that the first paragraph
begin: "The Secretary has referred your
letter of August 7 to me . . .".

Walter Irulock
Walter Irulock
S/C-0

SUGGEST IT GO OUT RIGHT
AWAY. IT'S BEEN AROUND
TOO LONG NOW.

77D 328
box 15939
Japan Commerce Treaty VI

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FROM : E - Mr. Leddy

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I/R, I/T, NA

In reply refer to
CP

Dear Mr. Blakeney:

I have your letter of August 7 relative to the treaty of friendship, commerce and navigation with Japan, and to possible measures you suggest might be taken with a view to ameliorating the unfavorable effects which it is feared the Senate reservation may have on the status of American nationals engaged in the practice of professions in Japan.

The officers of this Department and of our Embassy who had a part in the negotiation of this treaty were keenly conscious of the situation you mention and accordingly, as you know, endeavored to secure in the treaty suitable protection for Americans engaged in the practice of professions in Japan, on a reciprocal basis and in conformity with precedents established by earlier United States treaties. The Senate concluded, however, for reasons which in its judgment appeared controlling, that the reservation was necessary as a matter of general policy.

The Senate's decision to adopt the reservation was taken after the question of the professions clause had been under consideration in that body for over a year. The issue of the continued acceptability of the rule represented by Article VIII (2) of the Japanese treaty was raised in May 1952 before both the Judiciary and the Foreign Relations Committees of the Senate, the former in connection with hearings on the so-called Bricker resolution for a constitutional amendment concerning the treaty power and the latter in connection with certain commercial

treaties

Mr. Don Bruce Blakeney,
Attorney and Counselor at Law,
404 Eikentou International Building,
Chiyoda-Ku Yurakucho 1-1
Tokyo, Japan.

treaties with countries other than Japan. During the period between that time and the final Senate action on July 21 of this year, the Senators were able to receive the views of interested parties; and it is understood that a number of communications on the subject, especially from various State boards of bar examiners and others opposed to the clause, did come in to the Senate. This Department presented the case for the professions clause to the best of its ability, both formally and in informal consultations. But now that the Senate has reached its deliberate decision, this Department is bound to respect it and may not, in my opinion, appropriately ask the President to withhold ratification for the purpose of requesting Senate reconsideration.

The Department of course remains much interested in doing what it can diplomatically, in the circumstances, to protect responsible American professional interests in Japan. The reservation does not of itself exclude or cause the exclusion of any person from a profession. It leaves the rights of persons to practice the professions in substantially the same situation as has existed in the absence of the treaty, neither improving substantially nor impairing their legal position. It is therefore not thought that a refusal on the part of the United States to proceed with bringing the treaty into force in normal course would benefit American interests in Japan. Such a refusal might rather tend to exacerbate the situation, and to jeopardize the many advantages the treaty in general affords as well as any disposition the Japanese Government might have to refrain from actually exercising its full rights with respect to restricting the practice of professions by American nationals.

The Japanese Government has already refrained from demanding a reservation on its behalf as extensive as that which will be applicable in the United States. That is, pursuant to the exchange of notes of August 29 the Japanese reservation is confined to the right, to the extent the Japanese Government sees fit to exercise the same, to restrict Americans to the extent only to which the several States restrict Japanese nationals. Hence, notwithstanding the Senate reservation, Japan will not in any event be entitled to apply an alienage bar to an American national whose license to practice his profession in the United States was obtained in a State that does not apply an alienage bar to Japanese nationals in respect of that profession. The primary decision affecting the treaty rights of American professional men in Japan will thus in reality be made by the several States of this country.

It is

It is not yet known just what policy the Japanese Government intends to follow under the treaty with respect to the matter in question; but it is hoped that no precipitate or drastic action adverse to established American interests is contemplated. Our Embassy at Tokyo will keep in touch with developments and will, as occasion warrants, undoubtedly invite the Japanese Government's attention to such considerations as may with propriety be suggested to the government of a sovereign country with which the United States enjoys friendly relations.

Enclosed as of possible interest is a copy of the report of the Senate Foreign Relations Committee on the treaty and an excerpt from the Congressional Record of July 21, both of which contain material bearing on the Senate's views with respect to the professions clause.

Sincerely yours,

Enclosures:

1. Copy of report of the Senate Foreign Relations Committee on the treaty.
2. Excerpt from the Congressional Record of July 21.